IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1263

ROBERT L. ANTHONY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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March 13, 1978

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INDEX.

CITATIONS.

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No.

ROBERT L. ANTHONY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

The Petitioner, Robert L. Anthony, respectfully prays that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on December 13, 1977.

OPINIONS BELOW.

The opinion of the Court of Appeals, not yet reported, appears in Appendix II hereto. The opinion of the United States Tax Court is set forth in T. C. Memo. 1976-302 and appears in Appendix I hereto.

JURISDICTION.

The judgment of the Court of Appeals for the Third Circuit was entered on December 13, 1977. This Petition was filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

Whether the forced payment of income tax deficiencies and penalties withheld by the Petitioner, a Quaker, on the basis of his conscientious objection to participation in war constitutes an abridgment of the free exercise of religion under Amendment I of the Constitution of the United States?

STATUTES AND RULES INVOLVED.

26 U. S. C. § 6651(a) and § 6653(a) and Rule 121 of the United States Tax Court Rules of Practice and Procedure.

STATEMENT OF THE CASE.

This Writ arises from the opinion and judgment of the United States Court of Appeals for the Third Circuit affirming a decision of the United States Tax Court in favor of the Respondent against the Petitioner (Docket No. 9401-75).

Petitioner, a Quaker and conscientious objector since World War II, filed income tax returns for the taxable years 1969 through 1972. On each return he claimed "war crime deductions" as a conscientious objector to war. A statutory notice of deficiencies in income tax and penalties were asserted. Thereupon, Petitioner filed a Petition with the Internal Revenue Service claiming abridgment of his First Amendment right to the free exercise of religion.

The Tax Court granted a hearing on June 14 and 23, 1976, but disallowed Petitioner's motion to present testimony on the issues. It found that even if all Petitioner's testimony were admitted, it would be irrelevant for as a matter of law Petitioner's First Amendment right would not be abridged by payment of the amount in issue. Finding no issue of material fact, the Tax Court granted a partial Summary Judgment requiring the addition to tax. (Rule 121, *U. S. Tax Court Rules of Practice and Procedure*) (App. I, p. A4).

Petitioner appealed to the United States Court of Appeals for the Third Circuit, *inter alia*, that his First Amendment right of free exercise of religion was abridged. In "passing over" other arguments raised by the Respondent, the Court held that the Tax Court did not err "in assessing Penalties" because "the Tax Court correctly determined that the violations alleged by taxpayer, would not, if true, constitute defenses to his obligation to pay income tax." (App. II, p. A6). It is from that holding that this Petition ensues.

REASON FOR GRANTING WRIT.

The Decision Below, as it Applies to Petitioner, a Quaker, Constitutes an Abridgment of the Free Exercise of Religion under Amendment I of the Constitution of the United States.

Petitioner, a former Episcopalian, commenced attending Quaker meetings in 1939. His conversion in 1942 to the Society of Friends (Quakers) was a matter of religious conscience. His former Christian denomination, like all other major American Christian denominations, supported the participation of Christians in their country's "just" wars. Unlike the major denominations, the Quakers, the Mennonites, and the Church of the Brethern, commonly known as the "Historic Peace Churches," have retained as an integral part of their religious belief and practice, the original Christian belief and practice in conscientious objection to participation in all wars, i.e., pacifism. It was for the purpose of worshiping and witnessing in this way that Petitioner joined the Quaker religious community. It is undisputed in the Courts below in regard to the Petitioner as well as at this level in regard to the Society of Friends that Petitioner and his Church take this position and adhere to it. (Brief of Appellee (Respondent), 3rd Cir., page 11; *U. S. v. American Friends Serv. Comm.*, 419 U. S. 7, 15). Further, the belief in this religious exercise without a commitment to its practice is not considered religious faith and, therefore, the Petitioner has consistently practiced it as his witness and testimony as a Quaker.

The history of Quaker peace testimony supports not only the withholding of one's body as a weapon of war, but also one's money. Quakerism was brought to the new

world in the late 1650's. As early as then "Edward Coppedge, for instance, not only had property distrained to the value of £5.7.0 for his refusal to train or pay fines in lieu thereof, but he 'was also whipped by order of the military officers' . . . . In 1612 a number of Quaker objectors were given two months in prison for not paying the fine . . . ." (Brock, Peter, *Pioneers of the Peaceable Kingdom*, 1968, Princeton Univ. Press, p. 37). Recently Petitioner's Media Monthly Meeting (his religious community) adopted a Minute stating in part that "civil disobedience in the refusal of military tax payments may be necessary and inevitable. As a Yearly Meeting we urge our members to consider nonpayment on religious grounds of that portion of taxes used by the military, even though this may entail civil disobedience or reducing income below taxable level." The Minute was also adopted by the Chester Quarterly Meeting and the Philadelphia Yearly Meeting Peace Committee. (Proposed Minute on Conscientious Objection to Military Taxes and the Mechanics of C. O. Response, Jan. 1978).

The issue then is joined between Petitioner and his Constitution. As a matter of law it has been determined by the lower courts that he whose conscience dissuades him, like Edward Coppedge over 300 years ago, to refuse taxes for the military now faces the possibility that neither the birth of a new country or of a new Constitution grants him that freedom to exercise his religion that Edward Coppedge was then denied.

Justice Douglas spoke to the instant principle in *U. S. v. American Friends Serv. Comm.*, 419 U. S. 7, in a dissenting opinion on different facts. In that case the Internal Revenue Service Code (26 U. S. C. § 3402) required employers to deduct and withhold federal taxes from wages. Quaker employees objected to withholding taxes on their salaries which represented a portion of the federal

budget allocated to military expenditures. (The District Court had found that 51.6 percent was a reasonable estimate based on the appropriations made by Congress in the calendar year 1968. 419 U. S. 7 at 12).

Justice Douglas stated:

> They invoke the Free Exercise Clause of the First Amendment as they are Quakers who are opposed to participation in war in any form and who claim that this method of collection directly forecloses their ability freely to express that opposition, i.e. to bear witness to their religious scruples. (419 U. S. 7 at 12).
>
> . . . . .
>
> Quakers with true religious scruples against participating in war may no more be barred from protesting the payment of taxes to support war than they can be forceably inducted into the armed forces and required to carry a gun, and yet be denied all opportunity to state their religious views against participation. (419 U. S. 7 at 13).

Petitioner contends that he cannot be forced to pay war taxes or the penalties for the same without effectively losing his freedom to exercise his religion. But the lower courts hardly took notice of this contention. In its 5 page opinion, the Tax Court attempted to dispose of Petitioner's constitutional argument in ten lines citing only three cases. In the first case, *Muste v. Comm.*, 35 T. C. 913 (1961), Muste contended that the First Amendment protected him from doing any affirmative acts in violation of his religious belief in the immorality of war. The freedom of religion issue was decided by the Court on the premise that a taxing statute is not contrary to the provisions of the First Amendment unless it directly restricts the free exercise of

religion. (Muste did not argue his case directly on the basis of the free exercise of his Quaker religion.) (35 T. C. 913 at 918). Yet there can be no more direct restriction than this on the person, his conscience and his religious activity as in that of the instant case. If Petitioner pays the tax for war, he is not practicing his religion and if he refuses he comes under the sanctions of law and is not free to practice his religion. Rather he is under coercion to follow the practice of other more established religions but not that of his own.

Russell v. Comm., 60 T. C. 942 (1973), was the second Tax Court case relied upon. It simply follows the *Muste* rule. No Tax Court case involving this issue has come before the highest Court so that this is a case of first impression, the dispute of which this Court should set to rest. The third case, *U. S. v. Malinowski*, 472 F. 2d 850 (3rd Cir. 1973) did not deal with the Free Exercise Clause at all. Vietnam protestors were alleged to have violated federal law and defended on the basis of freedom of speech. The Court held that "violating the federal law" was not conduct protected by the First Amendment. But here the issue is whether the federal law under the Free Exercise Clause will protect the freedom of religious conscience practiced. The Tax Court failing to address itself to this issue decided with *Russell v. Comm.*, 60 T. C. 942 (1973), that "the requirement that Petitioner bear (his) full share of the income tax does not interfere with the right to exercise (his) religion." (App. I, p. A4). But in truth, the issue is not whether the Petitioner is interfered with. The facts on their face cry out to that interference and support no other conclusion. The issue is whether such interference is tolerated by the First Amendment.

Petitioner argued his case *pro se* in the Tax Court and was understandably bewildered when the tax judge

told him his defense was "not a matter that we could take jurisdiction over." (R. 37) And further: "That this court is a statutory court, set up by Congress with one purpose—to determine whether or not an individual or a corporation, or a trust, or an estate owes some additional taxes or whether or not he is entitled to some taxes back." (R. 14) . . . . "I think if you go in the District Court . . . then you can get a direct ruling." (R. 18) . . . . "You are going to have to go to a different court, because this court only has jurisdiction over determining the deficiency or an overpayment of tax." (R. 19) . . . . "The only decision we have is, do you owe taxes . . . we don't have jurisdiction . . ." (R. 20) (Docket No. 9401-75). It is Petitioner's contention that the Tax Court did not provide him with a hearing or ruling on the constitutional issues he raised. He therefore appealed to the Third Circuit not only because he lost in the Tax Court but more importantly because the court itself admitted it could not decide his case on the merits because it lacked jurisdiction.

Hoping for a definitive ruling, the Petitioner fared no better in the Circuit Court. In a twenty-two sentence decision the Appeals Court ruled that proof of the violation of Petitioner's First Amendment right was legally irrelevant to the issue of the payment of the tax and penalties because "the Tax Court correctly determined that the violation alleged by taxpayer would not, if true, constitute defenses to his obligation to pay income tax." (App. II, p. A6). However, the primary argument of the Petitioner was his right to the free exercise of his religion flowing from his conscientious objection to all wars, those characterized by war crimes as well as those simply characterized by killing itself. This argument, however, was not directly addressed. In sustaining the Tax Court, the Third Circuit failed to present any rationale for its position. It may only be assumed that the decision establishes an absolute rule

for the payment of income taxes as a matter of law. That is, whenever the Constitution conflicts with the Internal Revenue Code in respect to the First Amendment, the Constitution must give way to the Code. Petitioner can only guess to what extent political and utilitarian rather than constitutional considerations underlie the decisions of this quasi-legislative Tax Court.

The Supreme Court has stated no such absolute rule against a holder of the First Amendment privilege. In matter of fact, the contrary is true. Religious belief is absolutely protected and religious practice is also protected unless there are "the gravest abuses endangering paramount interests". *Sherbert v. Verner*, 374 U. S. 398, 406 (1963); *West Virginia State Board of Educ. v. Barnette*, 319 U. S. 624 (1943). There is no question of grave and immediate danger here. Studies have shown that there has been no surge of converts to Quakerism since their conscientious objector status was legislatively and constitutionally recognized. (Delibert, Steven, *Letter to the Church-State Committee*, 1975, Amer. Civ. Lib. Union). The Petitioner has suffered grave effects however.

First Amendment tax exemptions cannot be absolutely unconstitutional. Cases under the free exercise clause almost always come in the context of a claim to exemption from an otherwise generally applicable law such as the United States Tax Code. Petitioner contends that challenges to a constitutional right must also be couched in terms of the Constitution and not in vague phrases such as "in the nature of things" (*Cantwell v. Connecticut*, 310 U. S. 296, 303) or "compelling state interests" (*U. S. v. American Friends Serv. Comm.*, 419 U. S. 7, 15). The first term involves the court in metaphysical speculation such as it avoided between "primary" and "secondary" in *Committee for Pub. Educ. v. Nyquist*,

413 U. S. 756. (The dissent had used the term "primary"). The second term smacks of utilitarianism rather than constitutionalism. "Interest" alone is not a constitutional prerogative. Rights, duties, and freedom are. Petitioner contends that in order to preserve the truth of the First Amendment only constitutional principle and not concepts of "political power" are weighty enough to interfere with his free exercise. See, *U. S. v. American Serv. Comm.*, 419 U. S. 7, 15.

The Court abjured us to beware of decisions arrived at through less than constitutional procedure:

> The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the range of majorities and officials, to establish them as legal principles to be applied by the Court. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote. *West Virginia State Bd. of Educ. v. Barnette*, 319 U. S. 624 at 638.

"Compelling state interests" may convince a legislature not to legislate war tax exemptions or may unduly motivate quasi-legislative courts such as the Tax Court, but no such "state interest" should be relevant to the deliberations of this Court. On the other hand, the failure to grant a religious exemption may constitute a violation of the establishment clause under the same religious amendment. *Cantwell* stated that the First Amendment "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience or freedom to adhere to such religious organization or form of worship as the individual may choose

cannot be restricted by law." *Cantwell v. Connecticut*, 310 U. S. 296 at 303.

In the instant case the same compelling state interest, which came under criticism in *Walz v. Tax Commission*, 397 U. S. 664 (1970), (so often in lower courts influenced by nonconstitutional value judgments such as money or militarism) would force petitioner to accept a creed and practice a form of worship foreign to his present convictions but established as normative "civil religion" among the dominant Christian denominations, i.e. that it is both a Christian and American duty to fight in "just" wars and pay for it. (See Russell and Jones, eds., *American Civil Religion*, 1974, Harper and Row, p. 106; Kraybill, Donald, *Our Star Spangled Faith*, 1976, Herald Press, p. 171). However, scripture and tradition teach the contrary. The same Christian scripture Petitioner follows which instructs Christians not to resist one who is evil, to love one's enemies and to render to God the things that are God's (Holy Bible, R. S. V., Matt. 5:38-48; 22:21) was followed by the early Christians until they were conquered by Constantine in 313 A.D. and henceforth fought Caesar's wars and paid his taxes. (Durland, William R., *No King But Caesar? A Catholic Lawyer Looks At Christian Violence*, 1975 Herald Press, pp. 1-96).

Now a remnant of that holy community simply wishes to continue that ancient Christian practice which is the very heart of the religion. In all other respects they are law abiding citizens as were their first century counterparts—but to kill, never. No compelling interest will cause them to change their mind for there is no higher law than that which they and Petitioner have committed themselves to serve. To do less would be to join an established religion which pledges its allegiance in war and war taxes and receives religious exemptions from taxation as an institution for other less compelling interests than one's

conscience. (More often than not the free exercise clause seems to benefit religious property more than religious persons).

The fear is not for the government but for our Constitution. If Petitioner is compelled to do the very religious practice he left Episcopalianism not to do, it would constitute an establishment of religion. If this writ is denied, the only choice for Quakers, Mennonites, Brethren and other Christians who profess the same original pacifist belief and practice of early Christianity would be to join the establishment church or leave.

In the face of the problem of individuals who feel the impingement of the free exercise clause, the corporate church organization fares better. Certain church activities have been exempted when flat license taxes, the payment of which is a condition of the exercise of the privilege, were at issue. The power to tax the exercise or privilege is the power to control or suppress its enjoyment. *Murdock v. Pennsylvania,* 319 U. S. 105 (1943) at 112. The Court, in striking down a municipal ordinance which required religious colporteurs to pay a license tax as a condition to pursue their activities, selling religious literature of the church, said:

> It is true that the First Amendment, like the commerce clause draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes but that is no reason why we should shut our eyes to the nature of the tax and its distinctive influence. (319 U. S. 105 at 113).

Respondent below also argued that the tax in question was a general nondiscriminatory tax affecting all taxpayers in the same way and on that basis it was neutral and not violative. But this argument standing in juxta-position

with the free exercise clause is not controlling. (319 U. S. 105 at 115).

A law whose primary effect was to promote some legitimate secular aim was not immune from further examination to see whether it might nevertheless be unconstitutional because it had a direct and immediate effect of advancing religion. *Committee for Pub. Educ. v. Nyquist,* 413 U. S. 756 (1973), and that is the direct and immediate effect here. "A policy of neutrality in this case will not tolerate either governmental establishment of religion or governmental interference with religion." (*Walz v. Tax Commission,* 397 U. S. 667 at 667-672). To force Petitioner to pay his war taxes will constitute both.

The opinion of the Court in the *Jeanette* cases emphasized that the sale of books and pamphlets was a religious practice when done by religious persons according to *Murdock.* "This form of religious activity occupies the same high estate under the First Amendment as to worship in the churches and preaching from the pulpit." (319 U. S. 105 at 131).

In his dissent to *Murdock,* Justice Reed responded that:

> Many sects practice healing the sick as an evidence of their religious faith or maintain orphanages or homes for the aged or teach the young. These are, of course, in a sense, religious practices but hardly such examples of religious rites as are encompassed by the prohibition against free exercise of religion. . . . The rites which are protected by the First Amendment are in essence spiritual—prayer, mass, sermons, sacraments. . . . (319 U. S. 105 at 132).

Yet, the practices enumerated are the very same inspired by Petitioner's Bible (Matt. 25:31 ff). For the

Court to discriminate between a religious rite and a religious practice preferring the former to the latter would not be neutral and would be violative and raise Justice Reed's dissent to a majority precedent. But to deny the Petitioner's right to freely exercise his practice would do just that. Further, a religious practice, as any other religious activity may be either a negative or an affirmative one. A Christian of Petitioner's Quaker persuasion, negatively refuses to kill or pay for it and affirmatively participates in loving his enemies and paying for that. Petitioner's refusal to pay war taxes in the negative is as much a religious activity as the sale of religious literature is in the affirmative in furtherance of one's religion as in *Murdock*. Both are or should be protected.

Therefore, the Petitioner asks the Court to grant the writ to test the government's procedures in the present case and to determine whether the activity is restricted or abridged by the Constitution of the United States, i.e., whether there is a grave and compelling danger forcing said payments that the otherwise protected activity of bearing witness to one's religious conscience by refusing to pay war taxes used by the government for that purpose should protect; finally, whether the failure to grant such an exemption effectively constitutes an establishment of religion by forcing Petitioner, in order to practice the Christian religion, to join an established church which supports the payments of war taxes as a matter of church principle but which does not adhere to Petitioner's manner of freely exercising his religion.

CONCLUSION.

For these reasons, a Writ of Certiorari should be issued to review the judgment and opinion of the Third Circuit.

Respectfully submitted,

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March 13, 1978

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APPENDIX I.

T. C. Memo. 1976-302

UNITED STATES TAX COURT

ROBERT L. ANTHONY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 9401-75. Filed September 27, 1976.

Robert L. Anthony, pro se.
Lowell F. Raeder, for the respondent.

MEMORANDUM OPINION.

FAY, *Judge:* Respondent determined deficiencies in petitioner's Federal income tax and additions to tax as follows:

Year	*Deficiency*	*Additions under Sec. 6651(a)* [1]	*Additions under Sec. 6653(a)*
1969	$1,025.00	$115.00	$51.00
1970	1,050.00	114.00	53.00
1971	971.00	114.00	49.00
1972	962.00	203.00	48.00

We are to decide whether petitioner is entitled to certain "war crimes deductions" for the years in issue and

1. Unless otherwise indicated, all statutory references are to the Internal Revenue Code of 1954, as amended.

whether the additions to tax determined by respondent under section 6651(a) and section 6653(a) are proper.

Respondent has moved for partial Summary Judgment under Rule 121, Tax Court Rules of Practice and Procedure solely with respect to the propriety of petitioner's "war crimes deductions" for the years in issue. The motion was argued by the parties at a hearing held in Philadelphia, Pennsylvania on June 14, 1976, and petitioner filed a brief in support of his position.

Petitioner, Robert L. Anthony, resided in Moylan, Pennsylvania, at the time of filing the petition herein. He filed Federal income tax returns for each of the years in issue with the District Director of Internal Revenue in Chester, Pennsylvania, on March 26, 1974.

Briefly stated, petitioner maintains that payment of the amount in issue abridges his religious freedom under the First Amendment of the Constitution and would amount to complicity in alleged violations of international law committed by the United States in Southeast Asia during the years in issue.

While we do not question petitioner's sincerity, we have previously considered and rejected his First Amendment argument in *Robert L. Anthony,* 66 T. C. 367 (1976).[2] Questions of standing aside, we find petitioner's argument based on Nuremberg Principles or international law equally unpersuasive. *Autenrieth v. Cullen,* 418 F. 2d 586 (9th Cir. 1969), cert. denied 397 U. S. 1036 (1970); *Abraham J. Muste,* 35 T. C. 913 (1961); *Lorna H. Scheide,* 65 T. C. 455 (1975); *John David Egnal,* 65 T. C. 255 (1975); cf. *United States v. Malinowski,* 472 F. 2d 850 (3d

2. In *Anthony* we held that petitioner lacked standing to raise the issue of his complicity in the alleged crime. In the present case, however, respondent did not affirmatively plead the doctrine of collateral estoppel. See Rule 39, Tax Court Rules of Practice and Procedure.

Cir. 1973), cert. denied 411 U. S. 970 (1973). Since no issue of material fact has been presented, respondent's motion for partial summary judgment will be granted.

Next, we must decide whether to sustain the additions to tax determined by respondent under section 6651(a) and section 6653(a) and contested by petitioner at a trial conducted on June 23, 1976.

Petitioner, through his oral testimony at trial and presentation on brief, represents that both additions to tax were erroneously determined by respondent for the following reasons: (1) his religious tenets and international law constitute reasonable cause under section 6651(a) for his failure to timely file returns for the years in issue; (2) neither petitioner's untimely filing of his returns nor the deductions contained therein justify imposition of the negligence penalty under section 6653(a); (3) in any event, it is improper to impose both penalties upon petitioner for the untimely filing of his returns.

Section 6651(a) imposes an addition to tax for failure to timely file a return unless such failure is due to reasonable cause and not due to willful neglect. Section 6653(a) imposes an addition to tax, "if any part of any underpayment ° ° ° is due to negligence or intentional disregard of rules and regulations ° ° °."

We believe that petitioner has failed to carry his burden of proof on both counts. Petitioner's uninformed but good faith belief that his religious convictions or international law relieved him of his duty to timely file returns for the years in issue is insufficient to constitute reasonable cause. *Abraham J. Muste, supra; Robert A. Henningsen,* 26 T. C. 528, 536 (1956), affd. 243 F. 2d 954 (4th Cir. 1957).

As such belief constitutes petitioner's only justification for untimely filing his returns, we conclude that such

failure was due to willful neglect and that petitioner is liable for the addition to tax under section 6651(a). *Welch v. Helvering*, 290 U. S. 111 (1933); *Carroll F. Schroeder*, 40 T. C. 30 (1963).

With respect to respondent's determination under section 6653(a), petitioner's good faith *alone* is likewise insufficient to rebut respondent's determination of negligence or intentional disregard of rules and regulations. *American Properties, Inc.*, 28 T. C. 1100, 1116 (1957), affd. per curiam 262 F. 2d 150 (9th Cir. 1958); see *United States v. Malinowski, supra.*[3] Accordingly, we conclude that petitioner has failed to carry his burden of proof on this issue and is liable for the addition to tax under section 6653(a).

Finally, we consider petitioner's argument against the concurrent imposition of both penalties.[4] This Court has previously held that in appropriate cases, imposition of the addition to tax under section 6651(a) does not preclude the concurrent imposition of the negligence penalty under section 6653(a). *Robinson's Dairy, Inc.*, 35 T. C. 601 (1961), affd. 302 F. 2d 42 (10th Cir. 1962); *Vahram Chimchirian*, 42 B. T. A. 1437, 1442 (1940), affd. per curiam 125 F. 2d 746 (D. C. Cir. 1942).

Due to concessions by respondent,

Decision will be entered under Rule 155.

3. See also *Robin Harper*, T. C. Memo. 1973-214, affd. without published opinion, 505 F. 2d 730 (3d Cir. 1974).

4. Since respondent cites more than one reason for his assertion of the negligence penalty, we are not herein confronted with the question raised by petitioner of whether both penalties may be based *solely* on petitioner's failure to timely file his returns.

APPENDIX II.

Opinion and Judgment of the United States Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 77-1159

ROBERT L. ANTHONY,
Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

(Tax Court No. 9401-75)

ON APPEAL FROM THE DECISION OF THE UNITED STATES TAX COURT

Submitted Under Third Circuit Rule 12(6)
December 2, 1977
Before SEITZ, *Chief Judge*, GARTH, *Circuit Judge*, and MEANOR, *District Judge*.*

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OPINION OF THE COURT

(Filed December 13, 1977)

PER CURIAM.

Robert L. Anthony, taxpayer, appeals from a final decision of the Tax Court denying a petition seeking a redetermination of deficiencies in federal income taxes. The Tax Court held that he was not entitled to the "war crimes" deductions which he claimed in his tardily filed returns for the years 1969-1972. Consequently, deficiencies and penalties were assessed.

Taxpayer contends that the Tax Court improperly granted summary judgment because he was entitled to adduce proof that the actions of the United States in the Vietnam war violated his First Amendment rights and also violated international and domestic law. The Tax Court ruled such evidence legally irrelevant to the issue of the taxpayer's obligation to pay income tax.

Passing over any issue of standing and collateral estoppel, we are satisfied that the Tax Court correctly determined that the violations alleged by taxpayer would not, if true, constitute defenses to his obligation to pay

income tax. Consequently, the Tax Court did not commit error when it declined to hear the proof proffered. The sincerity of the taxpayer, which is not disputed, did not alter his obligation to share the common burden. Nor can we say that the Tax Court erred in assessing penalties.

The decision of the Tax Court will be affirmed.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 77-1159

ROBERT L. ANTHONY,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

(Tax Court No. 9401-75)

ON APPEAL FROM A DECISION OF THE
UNITED STATES TAX COURT

Present: SEITZ, *Chief Judge* and GARTH, *Circuit Judge* and MEANOR, *District Judge*°

JUDGMENT

This cause came on to be heard on the record from the United States Tax Court, and was submitted under Third Circuit Rule 12(6) on December 2, 1977.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Tax Court in this cause be, and the same is hereby affirmed. Costs taxed against appellant.

ATTEST:

/s/ THOMAS F. QUINN
Clerk

December 13, 1977

° H. Curtis Meanor, United States District Judge for the District of New Jersey, sitting by designation.

No. 77-1263

In the Supreme Court of the United States

OCTOBER TERM, 1977

ROBERT L. ANTHONY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
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Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1263

ROBERT L. ANTHONY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner contends that the imposition of federal income taxes and penalties violates his First Amendment rights.

On each of his untimely filed federal income tax returns for the years 1969 through 1972, petitioner sought to offset his entire taxable income by amounts designated as "war crimes deductions" (Pet. App. A1, A6). The Commissioner of Internal Revenue disallowed these deductions and asserted penalties for petitioner's late filing and for his negligent or intentional disregard of rules and regulations (*id.* at A1-A2). Petitioner then filed a petition in the United States Tax Court to contest the Commissioner's determination, claiming that "payment of the amount in issue abridges his religious freedom under

the First Amendment of the Constitution and would amount to complicity in alleged violations of international law committed by the United States in Southeast Asia during the years in issue" (*id.* at A2). The Tax Court upheld the Commissioner's determinations (*id.* at A1-A4), and the court of appeals affirmed (*id.* at A5-A7).

Petitioner does not challenge the lower courts' conclusion that his assertions with respect to the legality of the participation and conduct of the United States in the Vietnam war would not alter his liability to pay the income taxes and penalties in question. Rather, petitioner now relies solely upon the First Amendment, contending that requiring him to pay income taxes, part of which may go to support military expenditures, would impair the free exercise of the pacifist tenets central to his Quaker religion (Pet. 6-11) and would somehow force him "to join an established church which supports the payments of war taxes as a matter of church principle" (*id.* at 14).

As the court of appeals remarked, however, the sincerity of petitioner's religious beliefs does not "alter his obligation to share the common burden" (Pet. App. A7). The federal income tax as applied to petitioner in this case violates neither the Establishment Clause nor the Free Exercise Clause of the First Amendment. It is entirely neutral in its application and does not "aid one religion, aid all religions, or prefer one religion over another." *Everson* v. *Board of Education,* 330 U.S. 1, 15.

Nothing in the First Amendment grants immunity from otherwise valid legislation of general applicability merely because an individual disagrees, on religious grounds, with government policy. See *Murdock* v. *Pennsylvania,* 319 U.S. 105, 112; *Follett* v. *McCormick,* 321 U.S. 573, 577-578. See also *Autenrieth* v. *Cullen,* 418 F. 2d 586, 588-589 (C.A. 9), certiorari denied, 397 U.S.

1036; *Swallow* v. *United States,* 325 F. 2d 97, 98 (C.A. 10), certiorari denied, 377 U.S. 951; *Anthony* v. *Commissioner,* 66 T.C. 367, 373; *Russell* v. *Commissioner,* 60 T.C. 942; *Muste* v. *Commissioner,* 35 T.C. 913.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

APRIL 1978.